

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

MELVIN JONES, JR.,	)	No. CV-F-05-148 OWW/DLB
	)	
	)	ORDER DENYING PLAINTIFF'S
Plaintiff,	)	MOTION FOR TRANSCRIPTS AT
	)	GOVERNMENT EXPENSE (Doc.
vs.	)	401)
	)	
JOHN J. HOLLENBACK, JR.,	)	
	)	
Defendant.	)	
	)	
	)	

Plaintiff Melvin Jones, Jr., proceeding *in pro per*, has  
filed a motion for transcripts at government expense. Plaintiff  
seeks transcripts for the following proceedings:

Voir Dire (All)

Opening Statements (All)

Closing Arguments (All)

Jury Instructions (All)

Pre-Trial Proceedings (All)

Other - Trial Testimony of All Witnesses

1 Plaintiff submits an affidavit under penalty of perjury:

2 I do not have enough money or other assets to  
3 pay the pending Appeal FEES (\$455.00) I have  
4 NO CAR, NO SAVINGS; I own NO real estate, or  
5 any other asset(s) for that matter. I also  
6 am currently unemployed, and have no other  
7 monthly income by which to pay said FEES. My  
8 appeal (issues presented) will be on  
9 ostensibly narrow grounds: (a) error as to  
10 inadequate jury instruction (to include  
11 failure to give Stipulated Facts) and (b)  
12 Misconduct of defendant/defense counsel - the  
13 flavor of which permeated and tainted the  
14 entire trial proceeding and verdict with  
15 undue passion and prejudice.

16 28 U.S.C. § 753(f) provides in pertinent part:

17 Fees for transcripts furnished in other  
18 proceedings to persons permitted to appeal in  
19 forma pauperis shall also be paid by the  
20 United States if the trial judge or a circuit  
21 judge certifies that the appeal is not  
22 frivolous (but presents a substantial  
23 question).

24 "[A] 'substantial question' is one that is 'fairly  
25 debatable,' ... or 'fairly doubtful,' ... 'In short, a  
26 "substantial question" is one of more substance that would be  
27 necessary to a finding that it was not frivolous.'" *United States*  
28 *v. Handy*, 761 F.2d 1279, 1283 (9<sup>th</sup> Cir.1985).

29 Plaintiff's request for transcripts is much more extensive  
30 than the issues Plaintiff identifies he will assert on appeal.  
31 Plaintiff's request for transcripts of all pretrial proceedings  
32 is not reasonably related to the issues he identifies for appeal,  
33 nor is his request for a transcript of voir dire.

34 Plaintiff's intended appeal on alleged errors in jury  
35 instructions does not present a "substantial question" within the  
36

1 meaning of Section 753(f). As explained in detail in the  
2 Memorandum Decision and Order Denying Plaintiff's Motion for New  
3 Trial (Doc. 398, pp.15-24), Plaintiff's claims of instructional  
4 error are either waived because of Plaintiff's failure to request  
5 instructions or object to instructions, constituted invited  
6 error, or were frivolous.

7 Plaintiff's intended appeal on alleged misconduct of  
8 Defendant and/or Defendant's counsel "which permeated and tainted  
9 the entire trial proceeding and verdict with undue passion and  
10 prejudice" also does not raise a "substantial question" within  
11 the meaning of Section 753(f). As explained in detail in the  
12 Memorandum Decision and Order Denying Plaintiff's Motion for New  
13 Trial (Doc. 398, pp.8-14), Plaintiff's claims of misconduct based  
14 on alleged violations of orders on motions in limine are totally  
15 unfounded; his claim of misconduct because of improper closing  
16 argument is without merit because of Plaintiff's failure to  
17 object and because the argument was not improper. Plaintiff's  
18 claims of defense misconduct during discovery did not clearly and  
19 convincingly demonstrate that the defense verdict was obtained by  
20 the alleged misconduct, nor was Plaintiff prevented from fully  
21 and fairly presenting his case to the jury. Although the  
22 Memorandum Decision and Order Denying Plaintiff's Motion for New  
23 Trial did not address the merits of Plaintiff's claim of alleged  
24 misconduct based on Defendant's incorrect characterization of one  
25 of Plaintiff's prior convictions, as recited in the Memorandum  
26 Decision and Order Granting Defendant's Motion for Attorneys'

1 Fees, Plaintiff made no effort to correct this alleged  
2 mischaracterization of which he had to be aware either before or  
3 during trial and waited until months after the defense verdict to  
4 raise this alleged mischaracterization. Plaintiff himself first  
5 introduced evidence of his prior convictions at trial.

6 No issues that have merit and are not legally frivolous are  
7 presented by Plaintiff. ACCORDINGLY, Plaintiff's Motion for  
8 Transcripts at Government Expense is DENIED.

9 IT IS SO ORDERED.

10 Dated: March 18, 2008

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE